

No. 12578

United States
Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

GEORGE T. GOGGIN, Trustee in Bankruptcy of
the Estate of Frank Rieber, Inc.,
Appellee.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

FILED

AUG 19 1950

PAUL P. O'BRIEN,

No. 12578

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UNITED STATES OF AMERICA,

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amendment to Stipulation Re Tax Claims....	19
Appellant's Designation of Parts of Record Believed Necessary for Consideration on Appeal and to Be Printed.....	45
Appellant's Designation of the Record on Appeal	38
Appellant's Statement of Points to Be Relied Upon on Appeal.....	43
Appellant's Statement of Points to Be Urged Upon Appeal	37
Certificate of Clerk.....	41
Creditor's Petition for Involuntary Bankruptcy	2
Motion and Order Extending Time to File Petition for Review.....	32, 33
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	36
Order of Adjudication.....	7
Order Allowing Tax Claims of the United States of America.....	20

INDEX	PAGE
Order of General Reference.....	6
Order Remanding Review to Referee.....	34
Petition for Review of Referee's Order Dated May 25, 1949.....	26
Referee's Certificate of Review.....	28
Stipulation	8
Supplement to Referee's Certificate on Review	40

NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 14, Calif.

In the District Court of the United States for the Southern District of California, Central Division.

No. 44428-BH

CREDITOR'S PETITION FOR
INVOLUNTARY BANKRUPTCY.

In the Matter of Frank Rieber, Inc., a Corporation, in Bankruptcy.

To the Honorable Judges of the District Court of the United States for the Southern District of California:

The Petitions of Harry Kahan, Harry D. Seltzer and Norman Eckstein doing business as Kahan, Seltzer, & Eckstein of the City of Los Angeles, California, Frank Wilcox doing business as Wilcox Plastics Molding Company of the City of Los Angeles, California, and Herman A. Zierold and Elizabeth M. Zierold, doing business as Zierold Manufacturing Company of Burbank, California, respectfully represent:

I.

That Frank Rieber, Inc., is a corporation organized and existing under the laws of the State of California and has had its principal place of business and has resided at Los Angeles, California, within the above Judicial District for a longer portion of the six months immediately preceding the filing [2*] of this petition than in any other Judicial District.

II.

That the said Frank Rieber, Inc., owes debts to the amount of \$1000.00 or over, and said corporation is not a wage earner or a farmer.

III

That your petitioners are creditors of the said Frank Rieber, Inc., having provable claims against the said Frank Reiber, Inc., fixed as to liability and liquidated in amount, amounting in the aggregate in excess of the value of securities held by them to \$500.00; the natures and amounts of your petitioners claims are as follows:

That the said Kahan, Seltzer & Eckstein claim the sum of \$2947.99 for professional services rendered as certified public accountants, the said Wilcox Plastics Molding Company claims the sum of \$3672.82 for work, labor and materials furnished, and the said Zierold Manufacturing Company claims \$4268.09 for work, labor and materials furnished.

IV

That your petitioners further represent that the said Frank Rieber, Inc., is insolvent and that within four months next preceding the filing of this petition the said Frank Rieber, Inc., committed an act of bankruptcy in that as your petitioners are informed, believe, and therefore allege, the said Frank Rieber, Inc., did make on the 31st day of May, 1946, a general assignment for the benefit of creditors to M. W. Engleman of the City of Los Angeles.

* Page numbering appearing at top of page of original certified Transcript of Record.

Wherefore your petitioners pray that service of the petition, with a subpoena, may be made upon the said Frank Rieber, Inc., as provided in the Acts of Congress relating to [3] bankruptcy, and that the said Frank Rieber, Inc., may be adjudged by the court to be a bankrupt within the purview of said Act.

KAHAN, SELTZER & ECK-
STEIN

By /s/ HARRY D. SELTZER,
Partner.

WILCOX PLASTICS
MOLDING CO.

By /s/ FRANK WILCOX,
Owner.

ZIEROLD MANUFACTURING
COMPANY,

By /s/ HERMAN A. ZIEROLD,
Partner.

/s/ BATES S. HIMES,
Attorney for Petitioners. [4]

Oath to Petitioner

United States of America

Southern District of California ss.

Los Angeles County of California

Kahan, Seltzer & Eckstein, Wilcox Plastics Mold-
ing Co. & Zierold Manufacturing Company by their

duly authorized representatives, being three of the petitioners within named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

/s/ HARRY D. SELTZER.

Subscribed and Sworn to before me this 7th day of June, 1946.

[Seal] /s/ J. SCOTT WELLER,

Notary Public in and for the County of Los Angeles, State of California.

/s/ FRANK WILCOX.

Subscribed and Sworn to before me this 7th day of June, 1946.

[Seal] /s/ BATES S. HIMES,

Notary Public in and for the County of Los Angeles, State of California.

/s/ HERMAN A. ZIEROLD.

Subscribed and Sworn to before me this 7th day of June, 1946.

[Seal] /s/ BATES S. HIMES,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed June 7, 1946. [5]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 7th day of June, 1946;

Whereas, a petition was filed in this court on the 7th day of June, 1946, against Frank Rieber, Inc., a corporation alleged bankrupt above named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to H. L. Dickson, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Frank Rieber, a corporation, shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ PAUL J. McCORMICK,
United States District Judge.

[Endorsed]: Filed June 7, 1946. [6]

[Title of District Court and Cause.]

ORDER OF ADJUDICATION

It appearing that an involuntary petition in bankruptcy was filed against the above alleged bankrupt on the 7th day of June, 1946, by Harry Kahan, Harry D. Seltzer and Norman Eckstein, doing business as Kahan, Seltzer & Eckstein, Frank Wilcox, doing business as Wilcox Plastics Molding Company, and Herman A. Zierold and Elizabeth M. Zierold, doing business as Zierold Manufacturing Company, and that on the same date there was a general order of reference to the undersigned as Referee in Bankruptcy.

It further appearing that the alleged bankrupt filed a consent to adjudication on June 22, 1946,

It is hereby ordered that the said Frank Rieber, Inc., a corporation, be, and it hereby is, adjudged a bankrupt according to the Acts of Congress relating to bankruptcy.

Dated: June 24, 1946.

/s/ HUGH L. DIXON,
Referee in Bankruptcy.

[Endorsed]: Filed June 24, 1946. [7]

[Title of District Court and Cause.]

STIPULATION

The parties hereto hereby stipulate and agree to the facts herein set forth and agree that the trustee's objections to the claim of the Collector of Internal Revenue for the Sixth Collection District of California shall be submitted upon such stipulated facts and such argument as shall be offered in connection therewith. The execution and filing of this Stipulation shall not preclude either party from offering and incuding such additional evidence as is not inconsistent therewith.

I.

The bankrupt herein, Frank Rieber, Inc., is, and at all times pertinent was, a corporation organized under the laws of the State of California.

II

The petition in bankruptcy was filed herein on June 7, 1946.

III

On August 9, 1946, an Order Regarding Certain Tax Liens was made and entered herein in which this Court determined that the bankrupt [8] estate's liability to the United States as set forth in items IV to VIII, inclusive, below were secured by duly recorded and valid liens on certain real property belonging to the bankrupt estate. Said order further determined that such liens were entitled to

priority and ordered that the real property be sold free and clear and the liens of the United States be transferred to the proceeds of the sale.

IV

The bankrupt estate's liability for excise taxes for December, 1945, through April, 1946, as assessed by the Commisioner of Internal Revenue, plus penalties thereon and interest accruing to June 7, 1946, (including interest and penalty assessed) is \$3456.78. If the United States is entitled to interest on secured tax claims until such claims are paid in full, the bankrupt estate is liable for additional interest in the amount of 6% per annum on \$3287.54 from June 7, 1946, until the date of payment.

V

The bankrupt estate's liability for Federal Insurance Contributions taxes for the fourth quarter of 1945, as assessed by the Commissioner of Internal Revenue, plus penalties thereon and interest accrued to June 7, 1946, (including interest assessed) is \$982.93. If the United States is entitled to interest on secured tax claims until such claims are paid in full, the bankrupt estate is liable for the payment of additional interest in the amount of 6% per annum on \$926.72 from June 7, 1946, until the date of payment.

VI

The bankrupt estate's liability for Federal insur-

ance contributions taxes for the first quarter of 1946, as assessed by the Commissioner of Internal Revenue, plus penalties and interest accrued to June 7, 1946, (including interest assessed) is \$1421.67. If the United States is entitled to interest on secured tax claims until such claims are paid in full, the bankrupt estate is liable for the payment of additional interest in the amount of 6% per annum on \$1348.90 from June 7, 1946, [9] until the date of payment.

VII

The bankrupt estate's liability for withholding taxes for the first quarter of 1946, as assessed by the Commissioner of Internal Revenue, plus penalties thereon and interest accrued to June 7, 1946, (including interest assessed) is \$7561.50. If the United States is entitled to interest on secured tax claims until such claims are paid in full, the bankrupt estate is liable for the payment of additional interest in the amount of 6% per annum on \$7174.48 from June 7, 1946, until the date of payment.

VIII

The bankrupt estate's liability for Federal insurance contributions taxes for the second quarter of 1946, as assessed by the Commissioner of Internal Revenue, is \$196.90.

IX

The bankrupt estate's liability for Federal unem-

ployment taxes for the year 1945, as assessed by the Commissioner of Internal Revenue, plus interest accrued to June 7, 1946, is \$1100.98.

X

The bankrupt estate's liability for withholding taxes for the second quarter of 1946, as assessed by the Commissioner of Internal Revenue, is \$946.15.

XI

On December 28, 1944, the Commissioner of Internal Revenue assessed income tax for the taxable year ending December 31, 1943, against the bankrupt in the amount of \$22,995.29, plus interest of \$387.93 computed to December 10, 1944. With respect to such assessed liability the bankrupt made payments of \$987.50 on March 15, 1944, \$5000.00 on September 15, 1944, \$5669.26 on October 18, 1944, \$5669.26 on November 15, 1944, \$5741.31 on December 15, 1944, and \$171.79 on March 27, 1945. [10]

On November 30, 1948, the Commissioner of Internal Revenue issued to the bankrupt a certificate of over-assessment in which he certified an over-assessment of income tax for the year 1943 in the amount of \$10,337.21. The bankrupt estate's correct liability for interest on income tax for 1943 (including interest assessed) is an amount equal to the sum of 6% per annum on \$2177.02 from March 15, 1944, to September 15, 1944; on \$3164.52 from June 15, 1944, to September 15, 1944; and on \$3506.06 from September 15, 1944, to October 18, 1944.

XII

On July 26, 1945, the Commissioner of Internal Revenue assessed income tax for the taxable year ended December 31, 1944, against the bankrupt in the amount of \$7,658.65, plus interest of \$19.15, computed to May 15, 1945. With respect to such assessed liability, the bankrupt made payments of \$1,933.82 on May 15, 1945, \$1,914.67 on June 15, 1945, and \$1,914.66 on September 17, 1945. On November 30, 1948, the Commissioner of Internal Revenue issued to the bankrupt a certificate of over-assessment in which he certified an over-assessment of income tax for the year 1944 in the amount of \$7,658.65, of which amount \$4,290.07 was attributable to allowance of carry-back of net operating loss under Section 122(b) of the Internal Revenue Code, as amended by the Revenue Act of 1942. If the United States is entitled to interest on unpaid income tax liability accruing currently in 1944 until carry-back deductions from subsequent years are available, the United States was entitled to interest for late payment of the first installment of the bankrupt's income tax for the year 1944 in an amount of \$10.73, and the bankrupt estate is, therefore, entitled to an additional over-assessment in an amount equal to the difference between \$19.15 and \$10.73, or \$8.42; but if the United States is entitled to interest only [11] on the difference between the income tax liability accruing currently in 1944 and over-assessments due to carry-back deductions from subsequent years, the bankrupt estate's total liability for late

payment of the first installment of income tax for 1944 was zero, and the bankrupt estate is entitled to an additional over-assessment of \$19.15.

XIII

For the taxable year 1945 the bankrupt's income tax return showed a tax liability of zero. On November 29, 1946, the Commissioner of Internal Revenue assessed a deficiency for income tax for the taxable year ended December 31, 1945, against the bankrupt in an amount of \$4,310.09, plus interest of \$182.32 computed to November 26, 1946. With respect to such assessed liability, the bankrupt made no payments. On November 30, 1948, the Commissioner of Internal Revenue issued to the bankrupt a certificate of overassessment in which he certified an over-assessment for income tax for the year 1945 in the amount of \$4,310.09, the entire amount of which was attributable to allowance of carry-back of net operating loss under Section 122(b) of the Internal Revenue Code, as amended by the Revenue Act of 1942. If the United States is entitled to interest on unpaid income tax liability accruing currently in 1945 until carry-back deductions from subsequent years are available, the bankrupt estate's liability for interest on unpaid income tax for 1945 is an amount equal to 6% per annum on \$4,310.09 from March 15, 1946, to June 7, 1946; but if the United States is entitled to interest only on the difference between the income tax accruing currently in 1945 and over-assessments due to carry-

back deductions from subsequent years, the bankrupt estate's liability for interest on unpaid income tax for 1945 is zero.

XIV

On December 28, 1944, the Commissioner of Internal Revenue assessed excess profits taxes for the taxable year ending December 31, 1943, against the bankrupt in the amount of \$13,068.45, plus interest of \$250.04, computed to December 10, 1944. On November 29, 1946, the [12] Commissioner of Internal Revenue assessed a deficiency in excess profits tax for the year 1943 against the bankrupt in the amount of \$73,899.49, plus interest of \$11,596.35, computed to November 29, 1946. With respect to such assessed liability the bankrupt made payments of \$2,500.00 on September 15, 1944, \$3,522.82 on November 15, 1944, \$3,570.59 on December 15, 1944, \$3,522.82 on October 18, 1944, and \$106.49 on March 27, 1945. On November 30, 1948, the Commissioner of Internal Revenue issued a certificate of over-assessment to the bankrupt in which he certified over-assessments for the year 1943 of excess profits tax in the amount of \$44,124.82, and of interest thereon in the amount of \$4,090.15, such over-assessments being reduced, however, to a total of \$43,802.49 on account of an excessive amount of post-war refund credit previously allowed. Of the amount of the over-assessment for excess profits tax, \$18,059.73 was attributable to allowance of carry-back of an unused excess profits credit under Section 710(c) of

the Internal Revenue Code, as amended by the Revenue Act of 1942. If the United States is entitled to interest on unpaid excess profits tax liability accruing currently in 1943 until carry-back credits from subsequent years are available, the bankrupt estate's liability for interest on excess profits tax liability for 1943 (including interest assessed) is an amount equal to the sum of 6% per annum on \$29,774.67 from March 15, 1944, to December 31, 1945; on \$26,797.20 from December 31, 1945, to June 7, 1946; and on \$18,059.73 from March 15, 1944, to June 7, 1946; but if the United States is entitled to interest only on the difference between the excess profits tax liability accruing currently in 1943 and over-assessments due to carry-back credits from subsequent years, the bankrupt estate's total liability for interest on excess profits tax for 1943 is an amount equal to the sum of 6% per annum on \$29,774.67 from March 15, 1944, to December 31, 1945; and on \$26,797.20 from December 31, 1945, to June 7, 1946.

XV

On July 26, 1945, the Commissioner of Internal Revenue assessed excess profits taxes for the year ending December 31, 1944, against the [13] bankrupt in the amount of \$1,998.28, plus interest of \$5.00 computed to May 15, 1945. On November 29, 1946, the Commissioner of Internal Revenue assessed a deficiency in excess profits tax for the year 1944 against the bankrupt in the amount of \$45,-470.13, plus interest of \$4,651.65, computed to No-

vember 26, 1946. With respect to such assessed liability, the bankrupt made payments of \$504.57 on May 15, 1945, \$499.57 on June 15, 1945, \$399.66 on September 17, 1945, and was allowed a post-war credit of \$199.83 on September 28, 1945. On November 30, 1948, the Commissioner of Internal Revenue issued a certificate of over-assessment to the bankrupt in which he certified over-assessments for 1944 of excess profits taxes in the amount of \$47,268.58 and of interest thereon in the amount of \$1,155.57. Of the over-assessment for excess profits tax, \$35,972.78 was attributable to an allowance of carry-back of unused excess profits credit under Section 710(c) of the Internal Revenue Code, as amended by Revenue Act of 1942. If the United States is entitled to interest on unpaid excess profits tax liability accruing currently in 1944 until carry-back deductions from subsequent years are available, the bankrupt estate's liability for interest on unpaid excess profits taxes for 1944 is an amount equal to the sum of 6% per annum on \$34,174.33 from March 15, 1945, to June 7, 1946; and on \$399.65 from December 15, 1945, to June 7, 1946; but if the United States is entitled to interest only on the difference between excess profits tax liability accruing currently in 1944 and over-assessments due to carry-back credits from subsequent years, the bankrupt estate's liability for interest on unpaid excess profits taxes for 1944 is zero.

XVI

The bankrupt's excess profits tax return for the year 1945 reported a liability of zero. On November 29, 1946, the Commissioner of Internal Revenue assessed a deficiency in excess profits taxes for the year 1945 against the bankrupt in the amount of \$29,566.98, plus interest of \$1,250.72, computed to November 29, 1946. With respect to such assessed liability, the bankrupt made no payments. On November 30, 1948, [14] the Commissioner of Internal Revenue issued a certificate of over-assessment to the bankrupt in which he certified an over-assessment for the year 1945 of excess profits tax in the amount of \$29,566.98 and of interest thereon in the amount of \$584.05. Of the over-assessment for excess profits tax, \$15,760.01 was attributable to an allowance of carry-back of unused excess profits credit under Section 710(c) of the Internal Revenue Code, as amended by the Revenue Act of 1942. If the United States is entitled to interest on unpaid excess profits tax liability accruing currently in 1945 until carry-back credits from subsequent years are available, the bankrupt estate's liability for interest on unpaid excess profits tax for 1945 is an amount equal to 6% per annum on \$15,760.01 from March 15, 1946, to June 7, 1946, but if the United States is entitled to interest only on the difference between excess profits tax liability accruing currently in 1945 and over-assessments due to carry-back credits from subsequent years, the bankrupt estate's liabil-

ity for interest on unpaid excess profits taxes for 1945 is zero.

XVII

The bankrupt estate has received the total sum of \$1,825.07 from the United States as interest due on overpayments of taxes for the taxable years 1943 and 1944.

Dated: This 27th day of April, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT, and
JAMES D. PETTUS,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Harry C. Westover, Collector of Internal Revenue for the Sixth Collection District of California.

/s/ BATES S. HIMES,
Attorney for George T.
Goggin, Trustee in
Bankruptcy.

[Title of District Court and Cause.]

AMENDMENT TO STIPULATION
RE TAX CLAIMS

The parties hereto hereby stipulate and agree that the Stipulation filed herein concerning the claims for taxes of the Collector of Internal Revenue for the Sixth Collection District of California, dated April 27, 1949, shall be amended in the following particulars:

1. Paragraph XIV is amended to provide that in addition to the payments made by the bankrupt with respect to the assessed liability for excess profits taxes for the year 1943, the bankrupt was allowed a post-war credit of \$7,389.94.

2. Paragraph XIV is further amended to provide that the overassessment of excess profits tax certified by the Commissioner for the year 1943 in the amount of \$44,124.82 was reduced by \$4,412.48 on account of an excessive amount of post-war refund credit previously allowed, leaving an overassessment of tax in the amount of \$39,712.34, which with an over-assessment of interest in the amount of \$4,090.15 made a [16] total certified overassessment of \$43,802.49.

Dated: May 20th, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT,
JAMES D. PETTUS,

Special Attorneys,

Bureau of Internal Revenue

By /s/ EUGENE HARPOLE,
Attorneys for Harry C. Westover, Collector of Internal Revenue for the Sixth Collection District of California.

/s/ BATES S. HIMES,
Attorney for George T. Goggin, Trustee in Bankruptcy.

[Endorsed]: Filed May 24, 1949. [17]

[Title of District Court and Cause.]

ORDER ALLOWING TAX CLAIMS OF THE
UNITED STATES OF AMERICA

The United States of America having filed in the office of the Referee, through Harry C. Westover, Collector of Internal Revenue, a claim in the sum of \$167,458.55 dated December 2, 1946, and a claim in the sum of \$946.15 dated December 4, 1946, and said proofs of debts having been objected to by the Trustee, George T. Goggin, and the objections having come on for hearing before me, and a written stipulation of facts having been filed by the par-

ties; Bates S. Himes, Esq., appearing as attorney for the Trustee, and James M. Carter, United States Attorney for the Southern District of California; E. H. Mitchell and Edward R. McHale, Asistant United States Attorneys for said District; Eugene Harpole, Robert D. Scott and James D. Pettus, Special Attorneys for the Bureau of Internal Revenue, appearing for the United States of America; and due deliberation having been had and the matter having been submitted for decision and briefs filed, and the Court being fully advised makes the following Findings of Fact and Conclusions of Law: [18]

Findings of Fact

The facts stipulated by the parties herein under the date of April 27th, 1949, and amended under date of May 20, 1949, are hereby found and adopted by the Court as its findings of fact.

Conclusions of Law

1. The United States is entitled to interest at 6% per annum on tax claims covered by liens only up to the date on which the petition in bankruptcy was filed herein, viz., June 7, 1946.

2. The United States is entitled to interest at 6% per annum on income and excess profits taxes for the years 1943 to 1945, inclusive, only on such unpaid tax liability as remained after the allowance of overassessments attributable to carry-back de-

ductions and carry-back credits under Section 122 (b) and Section 710(c) of the Internal Revenue Code as amended by the Revenue Act of 1942.

3. The total unpaid tax liability of the bankrupt for the period covered by the claim of the Collector of Internal Revenue, 1943 to 1946, including penalties and interest, is \$28,599.51, which sum is computed as follows:

Liabilities

(Taxes assessed plus interest as determined herein)

Excise taxes, December 1945 through April 1946, plus penalties and interest to June 7, 1946	\$ 3,456.78
Federal Insurance Contributions taxes for fourth quarter 1945, plus penalties and interest to June 7, 1946	982.93
Federal Insurance Contributions taxes for first quarter 1946, plus penalties and interest to June 7, 1946..	1,421.67
Withholding taxes for first quarter 1946, plus penalties and interest to June 7, 1946	7,561.50
Federal Insurance Contributions taxes for second quarter 1946	196.90
Federal unemployment taxes for 1945 plus interest to June 7, 1946	1,100.98
Withholding taxes for second quarter 1946	946.15
1943 Income tax assessed	22,995.29
Interest as determined herein 6% per annum on:	
\$2,177.02 from Mar. 15, 1944 to Sept. 15, 1944.....	65.31
\$3,164.52 from June 15, 1944 to Sept. 15, 1944.....	47.47
\$3,506.06 from Sept. 15, 1944 to Oct. 18, 1944	19.26
1944 Income tax assessed	7,658.65
1945 Income tax assessed	4,310.09
1943 Excess profits tax assessed	13,068.45
1943 Excess profits tax deficiencies assessed	73,899.49

Interest as determined herein 6% per annum on :	
\$29,774.67 from Mar. 15, 1944 to Dec. 31, 1945.....	3,204.65
\$26,797.20 from Dec. 31, 1945 to June 7, 1946.....	700.96
1944 Excess profits tax assessed	1,998.28
1944 Excess profits tax deficiency assessed	45,470.13
1945 Excess profits tax deficiency assessed	29,566.98
<hr/>	
(1) Total assessed taxes plus correct interest as determined herein	\$218,671.92
<hr/>	

Payments, Credits and Overassessments of Tax

1943 Income Tax Payments :	
March 15, 1944 payments	\$ 987.50
September 15, 1944 payments	5,000.00
October 18, 1944 payments	5,669.26
November 15, 1944 payments	5,669.26
December 15, 1944 payments	5,741.31
March 27, 1945 payments	171.79
Overassessment of 1943 income tax	10,337.21
1944 Income Tax Payments :	
May 15, 1945 payments	1,933.82
June 15, 1945 payments	1,914.67
September 17, 1945 payments	1,914.66
Overassessment of 1944 income tax	7,658.65
Overassessment of 1945 income tax	4,310.09
1943 Excess Profits Tax Payments :	
September 15, 1944 payments	2,500.00
November 15, 1944 payments	3,522.82
December 15, 1944 payments	3,570.59
October 18, 1944 payments	3,522.82
March 27, 1945 payments	106.49
1943 Post-War credit	7,389.94
Overassessment of 1943 excess profits tax	39,712.34

1944 Excess Profits Tax Payments:

May 15, 1945 payments	504.57
June 15, 1945 payments	499.57
September 17, 1945 payments	399.66
1944 Post-War Credit allowed September 28, 1945	199.83
Overassessment of 1944 excess profits tax	47,268.58
Overassessment of 1945 excess profits tax	29,566.98

(2) Total payments and credits 1943-1945 inclusive,
 plus overassessment of income and excess tax
 liabilities for such years\$190,072.41

Unpaid liability for taxes, penalties and interest,
 1943-1946, inclusive (Item (1) minus item (2)).....\$ 28,599.51

Wherefore, it is hereby Ordered, Adjudged and
 Decreed:

1. That the claims of the Collector of Internal
 Revenue be and they are hereby allowed in the total
 sum of \$28,599.51.

Dated: This 25th day of May, 1949.

/s/ HUGH L. DICKSON,
 Referee in Bankruptcy.

Approved:

/s/ BATES S. HIMES,
 Attorney for George T. Goggin, Trustee in Bank-
 ruptcy.

Approved as to Form:

JAMES M. CARTER,
 United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT,
JAMES D. PETTUS,
Special Attorneys, Bureau of
Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Collector of Internal Revenue for the
Sixth Collection District of California.

[Endorsed]: Filed May 24, 1949. [22]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER DATED MAY 25, 1949

To Hugh L. Dickson, Referee in Bankruptcy:

The petition of the United States of America respectfully represents:

1. Petitioner is aggrieved by the Order made herein by the Honorable Hugh L. Dickson, Referee in Bankruptcy, dated May 25, 1949, a copy of which Order, and the Findings of Fact and Conclusions of Law, are attached hereto as Exhibit A and made a part hereof.

2. The Referee in Bankruptcy erred in respect of said Order in concluding as a matter of law that the United States is entitled to interest on tax claims covered by liens only up to the date of the filing of the petition in bankruptcy.

3. The Referee in Bankruptcy erred in respect of said Order in failing to allow the claim of the United States for interest on tax claims covered by liens up to the date of payment.

4. The Referee in Bankruptcy erred in respect of said Order in concluding as a matter of law that the United States is entitled to interest on income and excess profits taxes for the years 1943 to 1945 [23] inclusive only on such unpaid tax liability as remained after the allowance of overassessments attributable to carry-back deductions and carry-back

credits under Section 122(b) and Section 710(c) of the Internal Revenue Code as amended by the Revenue Act of 1942.

5. The Referee in Bankruptcy erred in failing to allow the claim of the United States for interest on that portion of the assessed and unpaid income and excess profits tax liability for the years 1943 and 1945 inclusive, which was subsequently allowed as an overassessment attributable to carry-back deductions and carry-back credits under Section 122(b) and Section 710(c) of the Internal Revenue Code as amended by the Revenue Act of 1942.

6. The Referee in Bankruptcy erred in concluding as a matter of law that the total unpaid tax liability of the bankrupt for the period covered by the claim of the Collector of Internal Revenue, 1943 to 1946, including penalties and interest, is \$28,599.51.

Wherefore Your Petitioner prays that said Order be reveiwd by a judge in accordance with the provisions of the Bankruptcy Act, as amended, that said Order be reversed, and that an Order be made allowing the United States payment of taxes, penalties and interest in accordance with the stipulations of the parties, including (1) interest to the date of payment on tax claims covered by liens and (2) interest on assessed and unpaid income and excess profits taxes for the years 1943 to 1945 inclusive, including that portion of such liability as was allowed as an overassessment attributable to carry-back deductions and carry-back credits under Section

122(b) and Section 710(c) of the Internal Revenue Code as amended by the Revenue Act of 1942.

Dated: This 28th day of July, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT, and
JAMES D. PETTUS,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for United States
of America.

[Endorsed]: Filed July 28, 1949. [24]

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE OF REVIEW

To the Honorable Ben Harrison, District Judge:

I, Hugh L. Dickson, the Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, order was

made and entered on the 25th day of May, 1949, and signed by me as Referee. That by the terms of the Order, and by the findings of fact and conclusions of law contained therein, it appeared that the United States of America filed in these proceedings a claim for \$167,458.55, dated December 2, 1946, and a further claim for \$946.15, dated December 4, 1946, both claims being for taxes and interest. That the Trustee in Bankruptcy, George T. Goggin, filed written objections to said claims. That thereafter the United States of America, the claimant, and the said Trustee entered into a written stipulation of facts and also an amendment to the stipulation. That for the information of the Court said stipulations are submitted herewith. That it also appears that the said claimant, in addition to the taxes allowed by the Order of May 25 in the [31] sum of \$28,599.51, claims first, that it is entitled to interest at 6% per annum on the claims covered by liens not only up to the date of bankruptcy but beyond the date of bankruptcy, which was June 7, 1946, to the time of payment, petition in bankruptcy having been filed against the bankrupt on the 7th day of June, 1946; and secondly, claimant also claims interest on income and excess profits taxes for the years 1943 to 1945 from the date the same became due, but calculated on the tax as it existed before the allowance of over-assessments attributable to carry-back deductions and carry-back credits under Section 122(b) and Section 710(e) of the Internal Revenue Code, as amended by the Revenue Act of 1942. That a copy of said Order of May

25, 1949, is submitted herewith.

That on the 28th day of July, 1949, the United States of America in such proceeding, feeling aggrieved thereat, filed a petition for review, which was granted.

That the errors complained of by the United States Government are set forth in full in its petition, a copy of which is submitted herewith.

That a summary of the evidence upon which such Order is based is set forth in the stipulation and amendment above referred to. In summary, it appeared that the Order of May 25 allowed interest only to June 7, 1946, the date of bankruptcy, and denied the claimant interest beyond that date, and only allowed the claimant interest on excess profits taxes for the years 1943 to 1945 on the taxes assessed after application of over-assessments attributable to carry-back deductions and carry-back credits.

That the questions presented on this review are as follows, to-wit:

First: Is the claimant entitled to interest on tax claims covered by liens beyond the date of bankruptcy and up to the time of payment, or is the claimant by law allowed interest only to the date of bankruptcy? And secondly, and as a separate question, is the claimant entitled to interest on income and excess profits taxes on the unpaid tax liability of the bankrupt as it existed before, or as it existed after allowance of over-assessments attributable to carry-back deductions and carry-back credits.

I hand up herewith, for the information of the Judge, the following papers:

1. Stipulation of the parties,
2. Amendment to the stipulation of the parties,
3. Petition for review of United States Government,
4. Order of May 25, 1949, signed by Referee Dickson,
5. Brief of Harry C. Westover, Collector of Internal Revenue for the Sixth District of California,
6. Trustee's Points and Authorities on Objections to Claims of United States Government.
7. Trustee's reply to the Government's brief in connection with the trustee's objections to certain tax claims.

Dated: August 15, 1949.

Respectfully submitted,

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 15, 1949.

[Title of District Court and Cause.]

MOTION AND ORDER EXTENDING TIME TO
FILE PETITION FOR REVIEW

Comes now the United States of America, by and through its attorneys, James M. Carter, United States Attorney for the Southern District of California, E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District, and Eugene Harpole, Robert D. Scott and James D. Pettus, Special Attorneys, Bureau of Internal Revenue, and moves the Referee that the time within which the United States may file a petition for review of the Referee's Order of May 25, 1949, upon the objections to the tax claim of the Collector of Internal Revenue mentioned in such Order, be extended to and including July 1, 1949.

Dated: June 3, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT and
JAMES D. PETTUS,
Special Attorneys,
Bureau of Internal Revenue

By /s/ EUGENE HARPOLE,

Attorneys for United States of America, and Harry
C. Westover, Collector of Internal Revenue.

It is so ordered this 3rd day of June, 1949.

/s/ DAVID B. HIND,
Referee in Bankruptcy.

[Endorsed]: Filed June 3, 1949. [36]

[Title of District Court and Cause.]

MOTION AND ORDER EXTENDING TIME TO
FILE PETITION FOR REVIEW

Comes now the United States of America, by and through its attorneys, James M. Carter, United States Attorney for the Southern District of California; E. H. Mitchell and Edward R. McHale, Assistant United States Attorneys for said District; Eugene Harpole, Robert D. Scott and James D. Pettus, Special Attorneys, Bureau of Internal Revenue, and moves the Referee that the time within which the United States may file a petition for review of the Referee's Order of May 25, 1949, upon the objections to the tax claim of the Collector of Internal Revenue mentioned in such Order, be extended to and including July 30, 1949.

Dated: June 29, 1949.

JAMES M. CARTER,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE,
ROBERT D. SCOTT, and
JAMES D. PETTUS,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ ROBERT D. SCOTT,
Attorneys for United States of America, and Henry
C. Westover, Collector of Internal Revenue.

It is so Ordered this 29th day of June, 1949.

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

[Endorsed]: Filed June 20, 1949. [37]

[Title of District Court and Cause.]

ORDER REMANDING REVIEW
TO REFEREE

This review presents two questions as follows:

1. Is the United States as claimant entitled to interest on tax claims covered by liens beyond the dates of bankruptcy and up to the time of payment, or is the claimant by law allowed interest only to the date of bankruptcy?

2. Is the United States as claimant entitled to

interest on incomes and excess profits taxes on the unpaid tax liability of the bankrupt as it existed before, or as it existed after allowance of over-assessments attributable to carry back deductions and carry back credits?

Under the first question I hold with the referee. I do not consider the case of *Sampsell vs. U.S.*, 153 F.(2d) 731, applicable to the present situation. In the *Sampsell* case I was dealing with mortgaged property that was sufficient to pay the debt in full and to have held that the interest stopped upon an adjudication in bankruptcy would have destroyed the contractual lien rights of the mortgagee. I feel the first question is controlled by the case of *City of New York vs. Saper*, [38] *Trustee in Bankruptcy*, 336 U.S. 328.

The second question is answered by the recent decision of the Supreme Court rendered on February 6, 1950, in the case of *John E. Manning, Etc., vs. Seeley Tube and Box Company, Etc.*, reversing the Third Circuit. The Referee followed the Third Circuit decision and therefore fell into error.

In view of the recent decision of the Supreme Court this matter is remanded to the Referee with instructions to conform to the opinions herein expressed.

Dated: This 20th day of April, 1950.

/s/ BEN HARRISON,
Judge.

[Endorsed]: Filed April 20, 1950. [39]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, a creditor and claimant in the above entitled bankruptcy proceeding, hereby appeals to the Court of Appeals for the Ninth Circuit from that portion of the order of the United States District Court for the Southern District of California dated April 20, 1950, which holds that the United States, as a claimant, is not entitled to interest upon its tax claims covered by liens beyond the date of bankruptcy and up to the time of payment, but is entitled by law to interest upon those claims only to the date of bankruptcy, and which order remanded the review upon that question to the Referee in Bankruptcy with instructions to conform to the opinion of the District Court. The order appealed from was entered on April 20, 1950.

Dated: May 18, 1950.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Claimant Appellant, United States of
America.

[Endorsed]: Filed May 19, 1950. [40]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS
TO BE URGED UPON APPEAL

To: George T. Goggin, Trustee in Bankruptcy of
Frank Rieber, Inc., a corporation, and Bates S.
Himes, his attorney:

You, and Each of You, Will Please Take Notice
that under the provisions of Rule 75 of the Rules of
Civil Procedure of the District Courts of the United
States, the appellant intends to rely upon the fol-
lowing points in the appeal of the above entitled
case:

1. The District Judge erred in holding that the
United States is entitled to interest on its tax claims
which were covered by liens filed prior to the date
of bankruptcy only to the date of bankruptcy.

2. That the District Court erred in failing to
hold that the United States is entitled to interest
upon its tax claims which were secured by liens

filed prior to the date of bankruptcy [41] to the time that payment of said tax lien is made.

Dated: May 17, 1950.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Claimant Appellant, United States of
America.

[Endorsed]: May 19, 1950. [42]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF THE
RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

You are hereby requested to include in the Record on Appeal from the order of the District Court dated April 20, 1950, the following:

1. Petition in Bankruptcy.
2. Order of Adjudication.
3. Stipulation.
4. Amendment to Stipulation Re Tax Claims.
5. Order Allowing Tax Claims of the United States of America.
6. Motion and Order Extending Time to File Petition for Revivew.
7. Motion and Order Extending Time to File Petition for Review.
8. Petition for Review of Referee's Order dated May 25, 1949.
9. Referee's Certificate of Review.
10. Order Remanding Review to Referee.
11. Notice of Appeal.
12. Appellant's Statement of Points to be Urged Upon Appeal. [43]
13. Appellant's Designation of the Record on Appeal.

Dated: May 19, 1950.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant U. S. Attorneys.

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Claimant Appellant, United States of
America.

[Endorsed]: Filed May 19, 1950. [44]

[Title of District Court and Cause.]

SUPPLEMENT TO REFEREE'S
CERTIFICATE ON REVIEW

To the Honorable Ben Harrison, Judge of the
United States District Court for the Southern
District of California, Central Division:

There has been requested herein that the following documents be added to the Referee's Certificate filed herein on August 16, 1949:

1. Motion and Order Extending Time to File Petition for Review dated June 3, 1949.
2. Motion and Order Extending Time to File Petition for Review dated June 29, 1949.

Dated: June 9, 1950.

Respectfully submitted,

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

[Endorsed]: June 9, 1950. [35]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 46, inclusive, contain the original Creditor's Petition for Involuntary Bankruptcy; Order of General Reference; Order of Adjudication; Stipulation; Amendment to Stipulation re Tax Claims; Order Allowing Tax Claims of the United States of America; Petition for Review of Referee's Order dated May 25, 1949; Referee's Certificate on Review; Supplement to Referee's Certificate on Review; Two Motions and Orders Extending Time to File Petition for Review; Order Remanding Review to Referee; Notice of Appeal; Statement of Points on Appeal; Designation of Record on Appeal and Proof of Service of Notice of Appeal, etc., which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 15th day of June, A.D. 1950.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE LOCKE,
Chief Deputy.

[Endorsed]: No. 12578. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. George T. Goggin, Trustee in Bankruptcy of the Estate of Frank Rieber, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 16, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Undocketed

UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE T. GOGGIN, Trustee in Bankruptcy of
the Estate of Frank Rieber, Inc., Bankrupt,
Appellee.

APPELLANT'S STATEMENT OF POINTS
TO BE RELIED UPON ON APPEAL

Pursuant to the provisions of Rule 19(6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, Appellant hereby designates the following points upon which it intends to rely in its appeal in the above entitled case:

1. The District Judge erred in holding that the United States is entitled to interest on its tax claims, which were covered by liens filed prior to the date of Bankruptcy, only to the date of bankruptcy.

2. That the District Court erred in failing to hold that the United States is entitled to interest upon its tax claims, which were secured by liens filed prior to the date of bankruptcy, to the time that payment of said tax is made.

Dated: This 12th day of June, 1950.

ERNEST A. TOLIN,

United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant United States
Attorneys.

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Appellant,
United States of America.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 16, 1950.

[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PARTS
OF RECORD BELIEVED NECESSARY
FOR CONSIDERATION ON APPEAL AND
TO BE PRINTED

Pursuant to Rule 19(6) of this Court, Appellant hereby designates the following parts of the record as being necessary for consideration of the points upon which it intends to rely in this appeal, and desires to have printed, omitting the title of court and cause from each of the documents designated for printing:

Pages of Certified Record and Documents.

1. Page 1:
Names and addresses of attorneys.
2. Pages 2-5, inclusive:
Petition for Involuntary Bankruptcy.
3. Page 6:
Order of General Reference.
4. Page 7:
Order of Adjudication.
5. Pages 8-15, inclusive:
Stipulation.
6. Pages 16-17, inclusive:
Amendment to Stipulation.
7. Pages 18-22, inclusive:
Order Allowing Tax Claims.

8. Pages 23-24, inclusive:
Petition for Review, omitting "Exhibit A,"
which is a copy of item 7, above.
9. Pages 31-33, inclusive:
Referee's Certificate on Review.
10. Page 35:
Supplement to Referee's Certificate on Review.
11. Page 36
Order extending time to file petition on Review.
12. Page 37:
Order extending time to file petition on Review.
13. Pages 38-39, inclusive:
Order Remanding Review to Referee.
14. Page 40:
Notice of Appeal.
15. Pages 41-42, inclusive:
Appellant's Statement of Points to be urged on
appeal (District Court).
16. Pages 43-44, inclusive:
Appellant's Designation of Record on Appeal
(District Court).
17. This Designation.
18. Appellant's Statement of Points to be Relied
Upon (Circuit Court).

Dated: This 12th day of June, 1950.

ERNEST A. TOLIN,
United States Attorney.

E. H. MITCHELL, and
EDWARD R. McHALE,
Assistant United States
Attorneys.

EUGENE HARPOLE, and
FRANK W. MAHONEY,
Special Attorneys,
Bureau of Internal Revenue.

By /s/ EUGENE HARPOLE,
Attorneys for Appellant,
United States of America.

Receipt of Copy acknowledged.

[Endorsed]: Filed June 16, 1950.

